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GEO GROUP, INC.

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SYLVIA AHN, as daughter and  
on behalf of the Estate of  
Choung Woong Ahn,

Plaintiff,

v.

GEO GROUP, INC.; UNITED STATES  
IMMIGRATION & CUSTOMS  
ENFORCEMENT  
Defendants.

) Case No. 1:22-cv-00586-JLT-BAK

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) **NOTICE OF SUPPLEMENTAL**  
) **AUTHORITY**

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**NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendant GEO GROUP, INC. (“Defendant”) by and through their undersigned counsel, hereby respectfully notifies the Court of supplemental authority in further support of their pending Motion to Dismiss Count Seven and Eight of Plaintiff’s Amended Complaint [ECF No. 21] and Defendant’s Reply to Plaintiff’s Opposition [ECF No. 24].

**I. BACKGROUND**

1. On May 17, 2022, Plaintiff Sylvia Ahn (“Plaintiff”) brought her complaint on behalf of the estate of Choung Woong Ahn (“Detainee”). [ECF No. 1]. On June 23, 2022, Plaintiff amended her Complaint. [ECF No. 18].
2. On July 12, 2022, Defendant filed their Amended Motion to Dismiss Count Seven and Eight of Plaintiff’s Amended Complaint. [ECF No. 21].
3. On July 26, 2022, Plaintiff filed their Memorandum in Opposition to Defendant Geo Group’s Amended Motion to Dismiss. [ECF No. 23].
4. Pursuant to Local Rule 230(d), on August 5, 2022, Defendant filed their Reply to Plaintiff’s Opposition “[n]o later than ten (10) days after the opposition was filed.” [ECF No. 24].

**II. SUPPLEMENTAL AUTHORITY**

Pursuant to Local Rules 230(m)(2), Defendant respectfully notifies the Court and the parties of the recent Opinion and Order of the Supreme Court of California in *Brennon B. v. Super. Ct. of Contra Costa County*, S266254, 2022 WL 3096272 (Cal. Aug. 4, 2022). *See* (“Exhibit A”). This opinion was issued on August 4, 2022, within twenty-four (24) hours of when Defendant’s Reply was due. Defendant respectfully requests the Court to prevent manifest injustice and permit the newly issued Opinion and Order of the Supreme Court of California to be permitted to supplement

Defendant's Amended Motion to Dismiss. [ECF No. 21]; [ECF No. 24]. Further, the Ninth Circuit has stated when a pertinent authority comes to a party's attention after the party's brief has been filed, the proper initial procedure for notifying the court is to advise the circuit clerk by letter of the supplemental citation without argument. *Fox v. Bonneville Power Administration*, 243 F.3d 547 \*2 (9th Cir. 2000); *see also Martinez v. Crab Addison, Inc.*, 358 Fed. Appx. 782 (9th Cir. 2009) (“[T]he district court also violated no constitutional rights in considering [Party]'s notice of supplemental authority; courts have long recognized the propriety of considering such notices of relevant case law. *See, e.g.,* Fed. R.App. P. 28(j).”)

In *Brennon B. v. Super. Ct. of Contra Costa County*, the Court considered whether a plaintiff who asserts allegations that the public school district had violated the Unruh Civil Rights Act can hold them liable under the Act, is relevant to the plaintiff's claims in this case in several respects. 2022 WL 3096272 at 1; *cf.* [ECF No. 1] at ¶140-149.

First, in *Brennon*, the plaintiff contends that the business establishments “in subdivision (b) encompasses public school districts, and that — even if it does not — the addition of subdivision (f) makes public school districts liable under the Unruh Civil Rights Act when they violate the ADA.” *Id.* at \*7.

In holding that a public school ***was not a business establishment***, the opinion on pages 10-12 is relevant to Plaintiff's claims. [ECF No. 23] at 4-7. The Supreme Court of California clarifies that

The everyday meaning of “business establishments” — even with the statute's expansive “of every kind whatsoever” clause— conveys reference to commercial entities, those whose principal mission is the transactional sale of goods or services. The Oxford English Dictionary identifies “the most common sense” of “business” as “[t]rade and all activity relating to it, esp. considered in terms of volume or profitability; commercial transactions, engagements, and undertakings regarded collectively; an instance of this.”

*Id.* at \*10.

All business establishments of every kind whatsoever — covers entities engaged in the kinds of commercial transactions characteristic of “business establishments”; it cannot be stretched to reach a state actor “carry[ing] out the state’s constitutionally mandated duty to provide a system of public education.” (*Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1195 (Wells))

*Id.* at \*11-12.

Furthermore, the Court emphasizes that “[Plaintiff]’s argument is not salvaged by the fact that the phrase ‘business establishments’ should be understood in the broadest sense reasonably possible.” *Id.* at \*15; *cf.* [ECF No. 23] at 4. The Court has explained that the Unruh Civil Rights Act applies only where an entity’s “**activities reasonably could be found to constitute a business establishment.**” *Id.*

Lastly, California’s Supreme Court has provided clarification on subdivision (f) of the Unruh Act. In *Brennon*, similar to our case, Plaintiff “contends that, even if the District is not a business establishment under subdivision (b) of section 51, it can still be sued for discrimination by virtue of subdivision (f) of that section.” *Id.* \*12.

[T]he addition of subdivision (f) **was not intended to effectuate a sea change in the operation of the Act** by subjecting a vastly expanded set of entities to liability for the first time in the law’s history. The Act retained, as it always had, the limitation that the law applied to the acts of “business establishments” — the amendment did not eliminate that provision from the Act. Such a modification would have far exceeded the goal of conforming the Unruh Civil Rights Act to the ADA and, as discussed below, would have rendered the Legislature’s amendment of other civil rights statutes superfluous.

[...]

Thus, the Court of Appeal was correct to conclude that subdivision (f) makes “any violation of the ADA **by a business establishment**” a violation of the Unruh Civil Rights Act.

[...]

“We thus *see no indication the Legislature intended, as to disability discrimination only, to transform the [Unruh Civil Rights Act]* into a general antidiscrimination statute making any violation of the ADA by any person or entity a violation of the Act.” (*Brennon B.*, *supra*, 57 Cal.App.5th at p. 400.)

*Id.* at \*30-32.

1 In closing the Court emphasized that

2 As the parties and the amici curiae make clear, there are exceedingly compelling, yet  
3 competing, policy concerns implicated by this case. Policy arguments, no matter how  
4 persuasive, cannot overcome a clear legislative intent derived from statutory text and  
appropriate extrinsic sources.

5 *Id.* at \*18. A true and correct copy of the August 4, 2022, opinion is attached.

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9 DATED: August 10, 2022

LEWIS BRISBOIS BISGAARD & SMITH LLP

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11 By: /s/ Cheryl Wilke

12 CHERYL WILKE

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**SERVICE LIST VIA CM/ECF**  
**SYLVIA AHN, as daughter and on behalf of the Estate of**  
**Choung Woong Ahn, v. GEO GROUP, INC**

**Case No. 1:22-at-00351**

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